

Amend 2 Cal. Code Regs. Section 18225 to read:

§ 18225. Expenditure.

(a) An expenditure is any monetary or nonmonetary payment made for political purposes.

A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

(2) Made by:

(A) A candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an office holder;

(B) A controlled committee;

(C) An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or

(D) An organization formed or existing primarily for political purposes as defined in subsection (a)(1), including but not limited to a political action committee established by any membership organization, labor union or corporation.

(b) "Expenditure" includes any monetary or non-monetary payment made by any person, other than those persons or organizations described in subsection (a), that is used for communications which expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates, or the qualification, passage or defeat of a clearly identified ballot measure.

1 (1) "Clearly identified" has the following meaning:

2 (A) A candidate is clearly identified if the communication states his name, makes
3 unambiguous reference to his office or status as a candidate, or unambiguously describes him in
4 any manner.

5 (B) A group of candidates is clearly identified if the communication makes unambiguous
6 reference to some well-defined characteristic of the group, even if the communication does not
7 name each candidate. A communication that clearly identifies a group of candidates and
8 expressly advocates their election or defeat is reportable as an expenditure, but the expenditure
9 need not be allocated among all members of the class or group on the campaign statement
10 reporting the expenditure.

11 (C) A measure that has qualified to be placed on the ballot is clearly identified if the
12 communication states a proposition number, official title or popular name associated with the
13 measure. In addition, the measure is clearly identified if the communication refers to the subject
14 matter of the measure and either states that the measure is before the people for a vote or, taken
15 as a whole and in context, unambiguously refers to the measure.

16 (D) A measure that has not qualified to be placed on the ballot is clearly identified if the
17 communication refers to the subject matter of the measure and to the qualification drive.

18 (2) A communication "expressly advocates" the nomination, election or defeat of a
19 candidate or the qualification, passage or defeat of a measure if it contains express words of
20 advocacy such as "vote for," "elect," "support," "cast your ballot," "vote against," "defeat,"
21 "reject," "sign petitions for," or otherwise refers to a clearly identified candidate or measure so

1 that the communication, taken as a whole, unambiguously urges a particular result in an election.

2 (A) A communication, taken as a whole, unambiguously urges a particular result in an
3 election if it is susceptible of no reasonable interpretation other than as an appeal to vote for or
4 against a specific candidate or measure. A communication is susceptible of no reasonable
5 interpretation other than as an appeal to vote for or against a specific candidate or measure when,
6 taken as a whole and with limited reference to external events such as proximity to the election, it
7 could only be interpreted by a reasonable person as containing an appeal to vote for or against a
8 specific candidate or measure because –

9 (i) The electoral portion of the communication is unmistakable, unambiguous, and
10 suggestive of only one meaning; and

11 (ii) Reasonable minds could not differ as to whether it encourages a vote for or against a
12 clearly identified candidate or measure, or encourages some other kind of action on a legislative,
13 executive or judicial matter or issue.

14 (B) The following non-exhaustive examples, referring to candidates or measures on the
15 ballot in an upcoming election, illustrate statements that in most contexts would be “susceptible
16 of no reasonable interpretation other than as an appeal to vote for or against a specific candidate
17 or measure:” “Smith’s the One;” “No Measure A;” “Rally ‘round O’Malley;” “Create jobs with
18 Measure X;” “Only Nancy Brown can clean out City Hall;” “Proposition 123 – your last chance
19 to save California;” “Joe Green will earn your trust;” “Bob Boone is an unqualified, special-
20 interest puppet;” “Shirley Hall – bad for California, bad for you.”

21 (C) The following non-exhaustive examples, referring to candidates or measures on the

1 ballot in an upcoming election, illustrate statements that would be susceptible of a reasonable
2 interpretation other than as an appeal to vote for or against a specific candidate or measure:
3 “Assemblymember Nancy Brown needs to be tough on criminals. Call her and tell her to stand
4 firm on AB 100;” “Poor children need a home too. Support the Mayor’s stance against more
5 budget cuts;” “Thank you, Supervisor Smith, for continuing to support our farmers.”

6 (D) Safe Harbor. A communication does not "expressly advocate" the nomination,
7 election or defeat of a candidate or the qualification, passage or defeat of a measure, within the
8 meaning of this regulation, if it does not include indicia of express advocacy such as mention of
9 an election, candidacy, political party, opposing candidate, ballot measure, voting by the general
10 public, or the character, qualifications or fitness for office of a candidate or officeholder, or the
11 merits of a ballot measure and focuses on a legislative, executive or judicial matter or issue,
12 either urging a candidate to take a particular position or action with respect to the matter or issue,
13 or urging the public to adopt a particular position and to contact the candidate with respect to the
14 matter or issue.

15 (E) Rules of Interpretation. If a communication does not qualify for the safe harbor
16 defined above, the Commission shall consider whether the communication includes any indicia
17 of express advocacy, and whether the communication has an interpretation other than as an
18 appeal to vote for or against a clearly identified candidate or measure, in order to determine
19 whether, on balance, the communication is susceptible of no reasonable interpretation other than
20 as an appeal to vote for or against a clearly identified candidate or measure.

21 (3) Reporting expenditures.

1 (A) The amount of an expenditure reportable pursuant to this subsection shall include all
2 costs directly attributable to the communication, including but not limited to salaries, production,
3 postage, space or time purchased, agency fees, printing and any additional administrative or
4 overhead costs attributable to the communication. The expenditure does not include any of the
5 regular ongoing business overhead which will be incurred in similar amounts regardless of the
6 communication.

7 (B) When printed or broadcast communications circulate outside the State of California,
8 the expenditure may be calculated on the basis of the fraction of the total cost attributable to
9 circulation within California.

10 (C) Costs directly traceable to the communication are reportable when the communication
11 is made, or when payments are made in connection with the development, production or
12 dissemination of the communication, whichever is earlier.

13 (D) The costs of printing and distributing petitions, recruiting, training and paying
14 expenses of petition circulators, and other costs incurred in connection with qualification of a
15 measure are reportable "expenditures."

16 (4) Notwithstanding the provisions of this subsection, the term expenditure does not
17 include costs incurred for communications which expressly advocate the nomination, election or
18 defeat of a clearly identified candidate or candidates or the qualification, passage or defeat of a
19 clearly identified measure or measures by:

20 (A) A regularly published newspaper, magazine or other periodical of general circulation
21 which routinely carries news, articles and commentary of general interest.

1 (B) A federally regulated broadcast outlet.

2 (C) A regularly published newsletter or regularly published periodical, other than those
3 specified in paragraph (b)(4)(A), whose circulation is limited to an organization's members,
4 employees, shareholders, other affiliated individuals and those who request or purchase the
5 publication. This paragraph applies only to the costs regularly incurred in publishing and
6 distributing the newsletter or periodical. If additional costs are incurred because the newsletter or
7 periodical is issued on other than its regular schedule, expanded in circulation, or substantially
8 altered in style, size or format, the additional costs are expenditures.

9 (c) Any payment used to make contributions, as defined in Section 82015 and Regulation
10 18215, is an expenditure.

11 Note: Authority cited: Section 83112, Government Code. Reference: Section 82025, Government
12 Code.